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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/833,656	04/13/2001	Daniel Simon	50310-00684	1751
25243	7590	11/01/2005	EXAMINER	
COLLIER SHANNON SCOTT, PLLC 3050 K STREET, NW SUITE 400 WASHINGTON, DC 20007			MILLER, BRANDON J	
			ART UNIT	PAPER NUMBER
			2683	

DATE MAILED: 11/01/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

09/833,656

Applicant(s)

SIMON ET AL.

Examiner

Brandon J. Miller

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 15 August 2005.
- 2a) ☐ This action is FINAL. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-82 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☒ Claim(s) 1, 11, 12, 23, 24, 36, 48, 51, 54, 56, 66, 67 and 78-82 is/are allowed.
- 6) ☒ Claim(s) 2-10, 13-22, 25-35, 37-47, 49, 50, 52, 53, 55, 57-65 and 68-77 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 06 September 2001 is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
 - ☐ Certified copies of the priority documents have been received in Application No. _____.
 - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____ |

DETAILED ACTION

Response to Amendment

Continued Examination Under 37 CFR 1.114

A request for continued examination under 37 CFR 1.114, including the fee set forth in 37 CFR 1.17(e), was filed in this application after allowance or after an Office action under *Ex Parte Quayle*, 25 USPQ 74, 453 O.G. 213 (Comm'r Pat. 1935). Since this application is eligible for continued examination under 37 CFR 1.114, and the fee set forth in 37 CFR 1.17(e) has been timely paid, prosecution in this application has been reopened pursuant to 37 CFR 1.114. Applicant's submission filed on 9/14/2005 has been entered.

Allowable Subject Matter

Claims 1, 12, 24, 36, 48, 51, 54, 56, 67, 79, 81 contain allowable subject matter and claims 11, 23, 66, 78, 80, 82 contain allowable subject matter based on their dependence of independent claims 1, 12, 56, 67, 79, 81 respectively.

Claim Rejections - 35 USC § 103

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claim 55 is rejected under 35 U.S.C. 103(a) as being unpatentable over Sinclair and Goldberg.

Regarding claim 55 Sinclair teaches receiving updated gaming profile data relating to the users (see col. 13, lines 39-43). Sinclair teaches modifying the stored user gaming profile data,

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based of the received updated profile data (see col. 13, lines 35-43). Sinclair teaches maintaining a group of portable communication device users associated with a group (see col. 5, lines 5-13). Sinclair does not specifically teach a method of maintaining a group of portable communications device users associated with an affinity group based on comparisons of stored user gaming profile data, comparing the modified user gaming profile data to a predefined affinity group definition or modifying as needed the users associated with the affinity group based on the comparison of the modified user gaming profile data with the predefined affinity group definition. Goldberg teaches maintaining a group of users associated with an affinity group based on comparisons of stored user gaming profile data (see col. 5, lines 42-45). Goldberg teaches comparing the modified user gaming profile data to a predefined affinity group definition and modifying as needed the users associated with the affinity group based on the comparison of the modified user gaming profile data with the predefined affinity group definition (see col. 5, lines 42-55 and col. 12, lines 1-8). It would have been obvious to one of ordinary skill in the art at the time the invention was made to make the gaming profile data relating to the users in Sinclair adapt to include a method of maintaining a group of portable communications device users associated with an affinity group based on comparisons of stored user gaming profile data, comparing the modified user gaming profile data to a predefined affinity group definition or modifying as needed the users associated with the affinity group based on the comparison of the modified user gaming profile data with the predefined affinity group definition because creating an affinity group of portable communication device users would allow for improved customization of an interactive game based on mobile station activity.

Claim Rejections - 35 USC § 112

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The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

Claim 2 recites the limitation "the profile data" in line 1. There is insufficient antecedent basis for this limitation in the claim. Claims 3-5, 7-10, 13-16, 18-22, 25-28, 30-35, 37-40, 42-47, 49-50, 52-53, 55, 57-60, 62-65, 68, 69-71, and 73-77 are rejected based on the same reasoning as recited above.

Claims 6, 17, 29, 41, 61, and 72 are rejected based on their dependence of dependent claims 5, 16, 28, 40, 60, 71 respectively.

Response to Arguments

Applicant's arguments filed 8/15/2005 have been fully considered but they are not persuasive. In response to applicant's argument that the references fail to show certain features of applicant's invention, it is noted that the features upon which applicant relies (i.e., "wherein the gaming profile data includes billing information, affinity group membership, portable communications device model, game applications resident on the user's portable communications device, user skill level, portable communications device usage level, any wireless connectivity, and inclusion and exclusion of other users") are not recited in the rejected claim(s). Although the claims are interpreted in light of the specification, limitations from the specification are not read into the claims. See *In re Van Geuns*, 988 F.2d 1181, 26 USPQ2d 1057 (Fed. Cir. 1993).

Conclusion

The prior art made of record and not relied upon is considered pertinent to applicant's disclosure.

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Kagan et al. U.S Patent No. 5,618,045 discloses interactive multiple player game system and method of playing a game between at least two players.

Angell et al. U.S. Patent No. 6,702,672 discloses a wireless interactive gaming system.

Gerace U.S. Patent No. 5,848,396 discloses a method and apparatus for determining behavioral profile of a computer user.

Owensby U.S. Patent No. 6,647,257 discloses a system and method for providing targeted messages based on wireless mobile location.

Zilliacus et al. U.S. Patent No. 6,893,347 B1 discloses a method and apparatus for playing games between the clients of entities at different locations.

Rautila U.S. Patent No. 6,524,189 B1 discloses multi-player game system using mobile telephone and game unit.

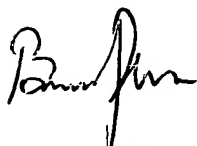
Any inquiry concerning this communication or earlier communications from the examiner should be directed to Brandon J. Miller whose telephone number is 571-272-7869.

The examiner can normally be reached on Mon.-Fri. 8:00 am to 5:00 pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, William Trost can be reached on 571-272-7872. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

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Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).



October 30, 2005



WILLIAM TROST
SUPERVISORY PATENT EXAMINER
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